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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,640	10/27/2000	Jeffrey S. Marks	36207.0100	4914

7590 06/07/2004

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EXAMINER

FULTS, RICHARD C

ART UNIT	PAPER NUMBER
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3628

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/698,640

Applicant(s)

MARKS, JEFFREY S.

Examiner

Richard Fults

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-4 are being examined on their merits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huberman (US 5826244 A) in view of Walker et al (US 6,553,346 B1) (hereinafter Walker).

Huberman discloses (see at least paragraphs 1-79 and claims 1-2) claims 1-4, acquiring customer information from said one or more customers, said customer information including a Preferred Program Term selected from one or more Program Terms associated with said product, automatically grouping said one or more customers into one or more pools in accordance with said selected Preferred Program Term, receiving bids from said one or more merchants to provide said product to said one or more customers in at least one of said pools, comparing said bids from said merchants to select a preferred bid from a preferred merchant, and notifying over said network said merchant of said preferred bid. Huberman does not go into detail concerning pools.

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Walker inherently and obviously teaches pools of merchants and customers by definition when discussing the type of item or service being auctioned. If a customer is requesting bids on an airline reservation, it is obvious that a toy seller is not going to be part of that merchant pool bidding on that ticket, and that the customer is self selected at least in a pool of airline ticket buyers. Only a merchant or agent in the airline business will self select themselves into that pool of merchants to respond to that bid request. By definition, it would have been obvious to one skilled in the art at the time of the invention to read Walker's CPO as a preferred program term from one buyer in one group (pool) who is soliciting bids from a plurality of bidders about a specific product or service (type of pool). Walker requires the collection of information about each buyer (customer), especially what they want to buy (Terms and type of pool). Claims 2-4 are rejected as being dependent upon rejected independent claim 1.

Because it would have been common sense and advantageous and would have provided a more comprehensive auction system it would have been obvious to one skilled in the art at the time of the invention to have added the teachings of Walker to those of Huberman, and to have added those of Huberman to those of Walker for the same reason.

5. Response to Applicant's Arguments

The 112 and 101 rejections have been withdrawn. While claim 1 recites in part a "pool", it does not take any action or steps with that pool. A new primary reference has been cited which, in combination with Walker, teaches the applicant's invention including an auction with bidding by multiple merchants.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Fults whose telephone number is 703-305-5416. The examiner can normally be reached on weekdays from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough, can be reached on (703)-305-0505. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

RCF

5/28/2004



JEFFREY PWU
PRIMARY EXAMINER